

RECEIVED
CENTRAL FAX CENTER

In the United States Patent and Trademark Office

AUG 25 2005

Appellants:	Mark T. Cammarota et al.	Docket No.:	14,966.1
Serial No.:	09/928,785	Group:	3761
Confirmation No:	8428	Examiner:	Anderson, Catharine L.
Filed:	August 13, 2001	Date:	August 25, 2005
For:	ABSORBENT ARTICLES HAVING WETNESS INDICATING GRAPHICS INCORPORATING A TRAINING ZONE		

Reply Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 1.193(b)(1), Appellants respectfully submit this Reply Brief in response to the Examiner's Answer which was mailed on June 29, 2005.

The Examiner's position is inconsistent with USPTO procedures and legally wrong. At pg. 3 of the Examiner's Answer, the Examiner admits giving "the limitation 'permanent character graphic' the broadest reasonable interpretation when examining the claims."

The Examiner employed the wrong standard. The proper standard is set forth in MPEP section 2173.05(a)(I):

During patent examination, the pending claims must be given the broadest reasonable interpretation ***consistent with the specification***. (emphasis added; citations omitted)

Appellants' specification clearly and unambiguously defines the term "character graphic":

The term "character graphic" is used herein to refer to a graphic containing an anthropomorphous image, and in particular an image having or suggesting human form or appearance which ascribes human motivations, characteristics or behavior to inanimate objects, animals, natural phenomena, cartoon characters, or the like.

Specification, pg. 6, lines 10-14.

K-C Docket No.: 14,966.1

Serial No.: 09/928,785

Instead of using the proper standard and considering the specification, the Examiner disregarded Appellents' specification and unilaterally adopted a "common definition of each word" of the phrase "permanent character graphic." This is inconsistent with the MPEP: ***"When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning..."*** MPEP section 2173.05(a)(I) (emphasis added; citations omitted). Accordingly, the Examiner did not follow proper USPTO procedures.

The Examiner also asserts that because humans and dogs share a common behavior – sitting – the graphics of Harju fulfill the claim limitation. The Examiner's logic is flawed. The fact that humans and dogs both sit, stand, sleep or even eat, is irrelevant. Harju does not disclose a "character graphic" according to the definition included in the specification and reprinted above. "If the claims, read in light of the specification, reasonably apprise those skilled in the art both of the utilization and scope of the invention, and if the language is as precise as the subject matter permits, the statute (35 U.S.C. 112, second paragraph) demands no more." MPEP section 2173.05(a)(II).

The Examiner's position is also contrary to caselaw and thus legally wrong. In Phillips v. AWH Corp., 03-1269 (Fed. Cir. 2005), the Court of Appeals for the Federal Circuit, *en banc*, recently confirmed the importance of the specification when seeking to ascertain the proper scope of the claims.

"Importantly, the person of ordinary skill in the art is deemed to read the claim term not only in the context of the particular claim in which the disputed term appears, but in the context of the entire patent, including the specification." Phillips, 03-1269 at 10.

The Examiner's position cannot be reconciled with the Phillips case. "As we stated in Vitronics, the specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; ***it is the single best guide to the meaning of a disputed term.***'" *Id.* at 13 (emphasis added).

K-C Docket No.: 14,966.1
Serial No.: 09/928,785

The court in Phillips at page 15 also quoted approvingly from Renishaw PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1250 (Fed. Cir. 1998):

Ultimately, the interpretation to be given a term can only be determined and confirmed with a full understanding of what the inventors actually invented and intended to envelop with the claim. The construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction.

For the foregoing reasons, the Examiner's rejections should be reversed.

The undersigned may be reached at: 920-721-3617.

Respectfully submitted,

MARK T. CAMMAROTA ET AL.

By:

Thomas M. Gage
Thomas M. Gage

Registration No.: 33,385

CERTIFICATE OF TRANSMISSION

I, Cynthia M. Trudell, hereby certify that on August 25, 2005 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 571-273-8300.

Cynthia M. Trudell

(Typed name of person transmitting correspondence)

Cynthia M. Trudell

(Signature of person transmitting correspondence)